

Internal Revenue Service  
P.O. Box 2508  
Cincinnati, OH 45201

Department of the Treasury

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Employer Identification Number:

Contact Person - ID Number:

Contact Telephone:

Date: **March 20, 2012**

LEGEND

UIL: 4945.04-04

N = Trade Organization  
P = Trade Organization  
E = Trade Organization

x = number  
u = \$amount

Dear :

We have considered your request for advance approval of your grant-making program under section 4945(g)(1) of the Internal Revenue Code, dated August 16, 2011.

Our records indicate that you are recognized as exempt from federal income tax under section 501(c)(3) of the Code and that you are classified as a private foundation as defined in section 509(a).

Your letter indicates that you will operate a scholarship grant-making program.

Your purposes are to award academic scholarships to provide financial assistance to individuals who are employed in the produce industry and their family members in furthering their education, to meet the expenses of tuition associated with obtaining degrees at educational institutions. Additionally, you seek to promote the topic of ethics in the produce industry in order to encourage individuals and businesses to consider the importance of doing the right thing in the course of their professional dealings.

To be eligible, grantees of your scholarship program must be attending or must have been accepted by and plan to attend an educational institution in order to obtain an undergraduate, graduate or post-graduate degree, and must be currently employed in the produce industry or be an immediate relative (son, daughter, father, mother, sister, brother, or grandchild) of someone currently employed in the produce industry. There is currently no limit on the number of individuals that are eligible to apply for the scholarship.

Under the scholarship program you will offer at least x scholarships each year in the amount of \$u per school year, renewable on an annual basis. Each scholarship under your scholarship

program will be subject to your annual review and approval of the recipients' academic record and other relevant information. Under your Scholarship Renewal Procedures, the scholarship recipients from prior years are eligible to have their scholarships renewed annually, but each recipient is required to re-submit an application to you each year and will therefore be subject to the same application procedures as are first-time applicants.

Final selection of scholarship recipients will be made by your Trustees after the field of applicants has been narrowed to approximately 5 to 8 candidates through the evaluation and vote of your Scholarship Advisory Board. Finalists for scholarship awards will be determined by the Advisory Board whose members are appointed by the Trustees. The Advisory Board is made up of several (currently 9) individuals who are disinterested persons who represent a diverse pool of experience in business, education and community involvement. Your employees and the employees, officers and board members of any trade organizations that are involved in the nomination process are ineligible to serve on the Advisory Board. At no time will any relatives or family members of your Trustees and/or Advisory Board members be eligible to apply for the scholarship.

The scholarship program will be publicized at trade shows, in trade publications and through your website, in cooperation with several 501(c)(6) trade organizations, who will notify their members (*via* their websites and other methods of their choice) as to the availability of scholarships, and annual renewal opportunities for existing scholarships. Applicants must apply directly to you. In addition, each of the several section 501(c)(6) trade organizations, including N, P and E, will nominate at least three (3) applicants from a group which includes their members and the children, grandchildren, brothers, sisters, nieces and nephews of their members.

All applicants are required to submit to you a complete academic record and an essay on ethics of at least 500 to 1,000 words. The essay will stress the importance of ethics and must detail an example of a situation in which the applicant was confronted with an ethical dilemma and did the right thing in spite of the cost. Applicants are expected to have grade point averages (in their most recent year of study) of at least 3.0 to be considered. The decision-making process for your scholarship award is weighted heavily in favor of applicants who display a strong understanding of the importance of ethics. Applicants must demonstrate academic achievement. The recipients will be expected to maintain a minimum of 3.0 GPA throughout their scholarship year and to make written reports of their progress to you at the end of each school term. You will monitor the use of the scholarship funds by requiring each recipient to provide an official copy of the student's transcript showing courses taken and grades received (if any). Where study at an institution does not involve attendance of class in specific courses but requires the preparation of research papers or projects, you require a brief report from the institution on the progress of the paper or project at least once a year. Such a report must be approved by the faculty member supervising the grantee or by another official of the institution. Upon completion of a grantee's study at an educational institution, a final report is also to be obtained. The scholarship recipients/grantees are expected to pursue a degree at an educational institution. In each case it is stipulated that a renewal of the scholarship funds for any succeeding period is contingent upon evidence of adequate performance at the time of review. Whenever possible the scholarship funds will be paid directly to an educational institution for the benefit of the recipient.

If there is any indication that any part of a scholarship grant has not been used in accordance with the purposes of the scholarship program, you will initiate an investigation. While conducting the investigation, you will withhold further payments to the extent possible until it has been determined that no part of the scholarship fund has been used for improper purposes and until any delinquent reports have been submitted. If you determine that any part of the scholarship fund has been used for improper purposes, you will take all reasonable and

appropriate steps to recover diverted funds or to insure the restoration of diverted funds. The steps you take will include legal action unless such action in all probability would not result in the satisfaction of execution of a judgment.

Additionally, you have agreed to continue to maintain records that include: (1) Information used to evaluate the qualifications of potential grantees; (2) Identification of the grantees (including any relationship of any grantee to you), the amount and purpose of each grant; and (3) All grantee reports and other follow-up data obtained in administering your scholarship grant-making program.

Sections 4945(a) and (b) of the Code impose certain excise taxes on "taxable expenditures" made by a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) of the Code provides that section 4945(d)(3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if it is demonstrated that:

- (1) The grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii);
- (2) The grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or
- (3) The purpose of the grant is to achieve a specific objective, produce a report or similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Regulations provides that to secure approval, a private foundation must demonstrate that:

- (i) Its grant procedure includes an objective and nondiscriminatory selection process;
- (ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (iii) The foundation plans to obtain reports to determine whether the grantees performed activities that the grants are intended to finance.

Based on the information submitted and assuming your award programs will be conducted as proposed, with a view to providing objectivity and nondiscrimination in making the awards, we have determined that your procedures for granting the awards comply with the requirements contained in section 4945(g) of the Code and that awards granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3).

In addition, we have determined that awards made under your procedures are 'scholarship or fellowship' grants within the meaning of section 117 of the Code, and are excludable from the gross income of the recipients subject to the limitations provided in section 117(b) of the Code, including to the extent that such grants are used for qualified tuition and related expenses within the meaning of section 117(b)(2) of the Code.

This determination is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to foundation managers, or members of the selection committee, or for a purpose that is inconsistent with the purpose described in section 170(c)(2)(B) of the Code.

The approval of your award program procedures herein constitutes a one-time approval of your system standards and procedures designed to result in awards which meet the requirements of section 4945(g)(1) of the Code. This determination only covers the grant programs described above. Thus, approval shall apply to subsequent award programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and case histories so that any or all award distributions can be substantiated upon request by the Internal Revenue Service.

This determination is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as a precedent.

You must report any future changes in your grant making procedures. Please keep a copy of this letter in your permanent records.

We have sent a copy of this letter to your representative as indicated in your power of attorney.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure: Notice 437  
A redacted copy of this letter